

BILL ANALYSIS

S.B. 822
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Insurance
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties report that preferred provider organization (PPO) networks, which are used by preferred provider benefit plans, health maintenance organizations, and other entities to assemble and credential providers and to negotiate discounts with certain providers in their networks, are subject to insufficient regulation in Texas. Those parties assert that, as a consequence, a large portion of the Texas health care system is not sufficiently regulated.

The parties further note that the number of intermediary entities involved in the health care claims payment process is increasing dramatically. While the discounter profits from discounting the appropriate payment to a provider, little, if any, information regarding the discounter's actions is shared with the provider or patient. It has been reported that without this information individual providers find it extremely difficult to determine how much and by whom they will be paid for a particular service and that patients have an equally difficult time determining their share of the cost of their medical care.

S.B. 822 seeks to better regulate PPO networks and increase the transparency of PPO provider reimbursement practices by establishing criteria for network and discount access, setting out contracting entity rights and responsibilities, and providing for registration of unlicensed contracting entities.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTION 1 of this bill.

ANALYSIS

S.B. 822 amends the Insurance Code to require a person who enters into a direct contract with a provider for the delivery of health care services to covered individuals and who establishes a provider network or networks for access by another party in the ordinary course of business to register with the Texas Department of Insurance (TDI) as a contracting entity not later than the 30th day after the date on which the person begins acting in that capacity in Texas. The bill establishes an exception to this registration requirement for a contracting entity that holds a certificate of authority issued by TDI to engage in the business of insurance in Texas or operates a health maintenance organization under the Texas Health Maintenance Organization Act. The bill requires a contracting entity that holds such a certificate of authority or that is a health maintenance organization to file with the commissioner of insurance an application for exemption from registration under which the contracting entity's affiliates are authorized to access the contracting entity's network, requires the application to be accompanied by a list of such affiliates, and requires the contracting entity to update that list with the commissioner on an annual basis. The bill establishes that the list of affiliates is public information and not exempt from disclosure under public information law. The bill requires the commissioner to grant such affiliates an exemption from registration requirements if the commissioner determines that an affiliate is not subject to a disclaimer of affiliation under provisions relating to insurance holding company systems and if the relationships between the person who holds a certificate of authority

and all affiliates of that person are disclosed and clearly defined. The bill applies this exemption only to registration and specifies that an entity granted an exemption is otherwise subject to the bill's provisions.

S.B. 822 requires a person required to register with TDI as a contracting entity to disclose all names used by the contracting entity, certain contact information for the entity, and any other information required by the commissioner by rule. The bill requires such disclosure to include a description or copy of the applicant's basic organizational structure documents and a copy of organization charts and lists that show both the relationships between the contracting entity and any of its affiliates and the internal organizational structure of the contracting entity's management. The bill requires such information to be submitted in a written or electronic format adopted by the commissioner by rule, authorizes TDI to collect a reasonable fee set by the commissioner as necessary to administer the registration process, and requires such fees to be deposited in the TDI operating fund.

S.B. 822 prohibits a contracting entity from selling, leasing, or otherwise transferring information regarding the payment or reimbursement terms of the provider network contract without the express authority of and prior adequate notification of the provider. The bill requires the provider network contract to require that on the request of the provider, the contracting entity will provide the information necessary to determine whether a particular person has been authorized to access the provider's health care services and contractual discounts. The bill requires a provider network contract, including the lines of business specified by the bill, to also specify a separate fee schedule for each such line of business in order to be enforceable against a provider. The bill authorizes the separate fee schedule to describe specific services or procedures that the provider will deliver along with a corresponding payment, to describe a methodology for calculating payment based on a published fee schedule, or to describe payment in any other reasonable manner that specifies a definite payment for services. The bill authorizes the fee information to be provided by any reasonable method, including electronically. The bill authorizes the commissioner by rule to add additional lines of business for which express authority is required.

S.B. 822 prohibits a contracting entity from providing a person access to health care services or contractual discounts under a provider network contract unless the provider network contract specifically states that the person is required to comply with all applicable terms, limitations, and conditions of the provider network contract. The bill requires a contracting entity, for the purposes of contract access, to permit reasonable access, including electronic access, to the provider during business hours for the review of the provider network contract. The bill restricts use or disclosure of that information to purposes of complying with the terms of the contract or state law.

S.B. 822 authorizes the commissioner to adopt rules to implement the bill's provisions on provider network contract arrangements. The bill authorizes the commissioner to impose a sanction or assess an administrative penalty on a contracting entity that violates any provisions governing provider network contract arrangements as added by the bill or a rule adopted to implement those provisions.

S.B. 822 establishes that, for purposes of complying with the requirements prescribed by the bill for a provider network contract, a provider's express authority is presumed if the provider network contract is in existence before September 1, 2013; if, on the first renewal after September 1, 2013, the contracting entity sends a written renewal notice by mail to the provider that conforms to certain specified requirements; and if the provider fails to respond within 60 days of receipt of the notice and has not objected to the renewal.

EFFECTIVE DATE

September 1, 2013.